

The NIMBY Report

*on the continuing struggle
for inclusive communities*

National Low Income Housing Coalition

January 2002

Maryland

Jury Awards Damages Against Town for Discriminating Against People with Mental Illnesses

Litigation under the Fair Housing Act has been a powerful force in securing decent and affordable housing for many low-income people with mental illnesses. However, the absence of community-based supportive services often makes it difficult for them to succeed in the community. Mental health "consumers" and the agencies attempting to support them frequently experience blatant zoning and land use discrimination, artificially diminishing needed services. [See City Uses Eminent Domain Power to Stop Mental Health Consolidation, The NIMBY Report, October 2001, available at <http://www.nlihc.org/nimby/1001.htm>]. In Leonardtown, MD, Clarissa Edwards and Pathways, Inc. have just broken through this practice, with a jury awarding over half a million dollars in compensatory damages to Pathways, a psychiatric rehabilitation program, and \$20,000 in pain and suffering to Ms. Edwards, a Pathways client. The jury also awarded them punitive damages. This landmark case is among the first "Not In My Back Yard" cases in the nation to be decided by a jury involving mental disability.

In 1997, Pathways sought a building in downtown Leonardtown so its clients would have opportunities to be in a more integrated community setting. The Town Council endorsed the project initially, but two months later, Councilman Daniel Muchow stirred up opposition to the project because he did not believe it was desirable for people with mental illness to be in the downtown. Mr. Muchow started a petition drive to have the Town Council rescind its endorsement. The Town Council was in fact persuaded by Mr. Muchow and a crowd of citizens who expressed their opposition to Pathways' clients at a public meeting. The Town rescinded its endorsement causing Pathways to lose the opportunity to buy the building. The Town later blocked Pathways' attempt to secure another building by refus-

ing to issue an occupancy permit.

On December 19, after a six-day trial, a federal court jury in Greenbelt, MD, returned a verdict in favor of Ms. Edwards and Pathways, finding that the defendants had violated the Americans with Disabilities Act and the Equal Protection clause of the U.S. Constitution. Ms. Edwards told the jury that it was important to her to have her treatment program in the downtown near social, educational, and employment opportunities. Ms. Edwards also testified that the Town had humiliated her and treated her like a second-class citizen.

The lead attorney on the case for the plaintiffs, Beth Pepper of Baltimore, MD, said: "This is a tremendous victory for people with mental illness who strive each day to overcome the stigma associated with their condition. The jury has sent an important message to communities everywhere that prejudice against people with mental illness is unacceptable."

For more information: Beth Pepper, lead counsel for plaintiffs Pathways and Clarissa Edwards: tel. 410-752-2744 ext. 203 or bethpepper@aol.com. Gerald McGloin, Executive Director of Pathways: tel. 301-373-3065 ext. 203.

Colorado

Networking and Alliance Building Overcome Local Opposition

Sometimes knowing your rights under the Fair Housing Act and communicating your willingness to assert them is the best way to overcome community opposition. Such a case occurred in suburban Denver this past fall.

Inspired by the humane care provided to his father by an Alzheimers group home, Tom Jones (a pseudonym) decided to remodel a large single-family house to provide care for up to 10 older people with Alzheimers and dementia. He secured a special use permit in Sep-

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tember 2001, over the vehement opposition of neighbors who testified at a public hearing about their fears that adjacent property values would go down and the nearly incomprehensible allegation that children might happen upon used hypodermic needles in the yard.

Two days after the special use permit was issued, Jones received a letter from an attorney representing the homeowners association, asserting that the group home would violate three of the neighborhood's covenants: (1) the covenant limiting use to single-family homes; (2) the covenant prohibiting the use of outbuildings or accessory buildings as residences (the owner was converting the garage for use as a bedroom); and (3) the covenant prohibiting "nuisance or annoyance or offensive activities." When Jones retained a lawyer, the homeowners association attorney sent a letter threatening state court litigation to enforce the covenants.

Jones' attorneys, Amy Robertson and Tim Fox, arranged a pre-litigation meeting in late October. In preparation, they researched their client's rights under the Fair Housing Act and concluded that the covenants would have to be waived as a reasonable accommodation. They invited Donna Hilton, Executive Director of Housing for All—the Metro Denver Fair Housing Center, and Kevin Williams, General Counsel of the Colorado Cross-Disability Coalition, to join the meeting to bring broader perspective.

The meeting provided a forum for discussing the need for such group homes in the Denver area. While the HOA did not initially appear willing to back off its litigation threat, Robertson and Fox saw an opportunity to educate the opposing lawyer—who knew a lot about Colorado real estate law but very little about the Fair Housing Act. They drafted a letter detailing their client's rights, with citations to more than a dozen cases favoring the right of group homes and their residents to locate in residential neighborhoods, notwithstanding community covenants. Within a week, and without the explicit threat of litigation by Jones' attorneys, the homeowners association confirmed that it would not challenge the operation of the home.

Robertson and Fox recommend the following approaches to others facing similar opposition:

- The importance of networking: If the HOA had believed that the group home operator was fighting on his own, it may have been emboldened to litigate. By getting representatives of the region's leading fair hous-

ing and disability organizations to weigh in, they communicated that Jones had important allies, and staying power.

- Using the Internet to find and communicate with fair housing lawyers in other parts of the country, and constructing the most well-researched and convincing written legal argument possible.

- Researching the status of the homeowners association, which, it turned out, may not have promulgated the covenants according to state law.

- Putting a human face on the situation. Inviting members of the HOA to visit the group home helped to dispel some of the preposterous allegations about how it would be run and apparently quelled the anxiety of some of the opponents.

For more information: Amy F. Robertson, Fox & Robertson, P.C., tel: 303-595-9700, Website: www.foxrob.com

New York

Religious Freedom Arguments Used to Preserve Homeless Services

For the past two years, at the corner of Fifth Avenue and 55th Street in the heart of affluent Manhattan, the Fifth Avenue Presbyterian Church has been trying to do its part to minister to homeless men and women. Not only does it operate a safe, licensed shelter (limited by New York City to 10 beds), but it has made an affirmative decision to allow other homeless people to sleep outside on church property when the shelter is at capacity, and to permit them use of bathrooms and a place to warm up in the morning.

Inexplicably, New York police moved in on December 4 (and on three subsequent occasions in the following week), according to a lawsuit filed by the church and the New York Civil Liberties Union, offering the homeless people the choice of leaving, going to a city shelter, or being arrested. Homeless people were forced from their places under an archway and from strips of land around the church where they had become accustomed to setting up cardboard shelters each night. The lawsuit alleges that the city violated the First Amendment rights of the church and the homeless

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people by depriving them of freedoms of association and religious expression and the "freedom to be left alone."

The police and other city agencies have been aware of the program all along, and have cooperated with it, said the Rev. Dr. Thomas K. Towell, the church's senior pastor. The church realizes that its program is not a long-term solution to homelessness, but Dr. Towell says that it offers outreach workers a chance to engage people and encourage them to get connected to services. Such an approach is particularly important for people who resist going to city-run shelters for fear of being robbed, beaten up, or sexually assaulted.

On December 19, federal Judge Lawrence M. McKenna issued a temporary restraining order, telling the city to stop harassing the church and its homeless clients, concluding that "[t]here is no reason to regard the mere presence of the homeless sleeping as a public nuisance." McKenna found that the city was interfering with the church's Christian ministry and violating its First Amendment right to free exercise of religion. The court ruled that the city and the police were doing irreparable harm to the church's program by chasing the homeless away.

For more information: Rev. Dr. Thomas K. Towell, Fifth Avenue Presbyterian Church, tel: 212-247-0490.

About The NIMBY Report

NIMBY - Not In My Back Yard - has become the symbol for neighborhoods to exclude certain people because they are homeless, poor, disabled, or because of their race or ethnicity.

The *NIMBY Report* supports inclusive communities by sharing news of the NIMBY syndrome and efforts to overcome it. It is published by the National Low Income Housing Coalition, in collaboration with the Building Better Communities Network, and is distributed monthly as a supplement to NLIHC's *Memo to Members*. Bi-annual issue reports provide in-depth analysis on specific subjects.

SHARE YOUR STORY

Each month, *The NIMBY Report* highlights instances of community opposition to affordable housing and community-based services, plus innovative ways to respond to such opposition. We also publish short opinion pieces and listings of useful resources. We welcome readers' suggestions about situations and resources that warrant attention.

Mail your suggestions to Nancy Ferria, Communications Director, National Low Income Housing Coalition, 1012 14th St. NW, Suite 610, Washington, DC 20005. Fax them to her at 202-393-1973. Or email them to nancy@nlihc.org